

DIVORCE MEDIATION

**HOW TO RESOLVE FAMILY LEGAL CONFLICTS IF YOU DON'T HAVE A
LAWYER**

Dakota County Law Library

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PRO SE DISCOVERY SERIES
Pamphlet 1

THIS IS A GUIDE PRODUCED BY THE DAKOTA COUNTY LAW LIBRARY
FOR INDIVIDUALS DOING THEIR LEGAL WORK WITHOUT THE
ASSISTANCE OF A LAWYER. IN LEGAL TERMINOLOGY, THESE
INDIVIDUALS ARE ACTING PRO SE.

DEFINITION:

"PRO SE (PROH SAY OR SEE), ADV. & ADJ. [Latin] For oneself; on one's own
behalf; without a lawyer"

from *Black's Law Dictionary*, Seventh Edition (1999)

This is a guide to mediation as an alternative for family legal conflicts.
It is not intended to provide legal advice.

INTRODUCTION

This guide is intended to provide accurate and authoritative information regarding family mediation, particularly in the area of divorce mediation.

For divorcing couples, mediation can be a good alternative to hiring a lawyer and resolving problems before a judge. People who use mediation generally are more satisfied with the agreements they have made. AND they usually achieve these results more quickly and at less cost.

Reasons why mediation can work better are:

- ❖ Couples have a better idea of what will work than a judge does, especially if children are involved**
- ❖ Individuals who help make up an agreement are more likely to live by the terms of the agreement**
- ❖ It shows a need for compromise**
- ❖ It fosters a win/win atmosphere for both individuals involved**

When individuals are unsure of their rights before or during divorce negotiations, they may need to consult an attorney. An attorney will describe what an individual's legal rights and duties are. This may relate to concerns about child custody and visitation, child support, childcare and/or paternity, spousal support, pensions or property division, and health insurance.

NOTE

In the case of divorce, Dakota County Court *requires* that divorcing couples attend a free mediation consultation to learn more about divorce mediation. Both parties must attend the consultation at the same time. However, if either party has a current restraining order or an order for protection against the other party, the initial consultation is voluntary. To inquire about this service, please contact Erickson Mediation Institute at 952-835-3688.

MEDIATION--WHAT IS IT?

When people mediate, they bring their conflict to a place where they try to settle their dispute. To assist with the process, an impartial third person, or "mediator" helps them reach an agreement. The mediator does not take sides or make decisions. Rather, he or she should be fair to all parties and help them find a solution.

WHEN TO USE IT

More and more individuals are trying to self-represent themselves. When these couples wish to divorce, one or both of the individuals are attempting to dissolve their marriage without the help of an attorney. While this process can often occur without the assistance of professionals, sometimes problems arise, and individuals need to ask for counsel or advice.

Often during divorce, individuals need to work out one or many problems with the other spouse. When they ask a mediator to help them solve a problem, they buy into a process that allows a trained third party to use facilitative skills to help them resolve their conflicts.

In certain situations, courts will require couples to mediate. This is called court ordered mediation. In Dakota County, a judge may order couples to mediate certain issues that are difficult to resolve. For resolving visitation conflicts, a judge has the discretion to assign a visitation expediter to help couples set up a visitation schedule for their children. Usually court ordered mediation lasts a short time. Costs for court ordered mediation are based upon ability to pay.

When couples seek mediation voluntarily or by court order, they are trying to resolve some routine problems that come up in divorce. Problems that people bring to mediation may include visitation, child support, parenting responsibilities, spousal maintenance (alimony), property division, debt division, and/or division of financial assets. The opportunity to mediate allows parties to take the time to address all their concerns and, with the mediator's help, to reach a workable compromise.

People mediate rather than go to trial. Individuals may mediate before separation, and before, during and after the divorce process. In fact, a final divorce decree can state that for future conflicts, parties agree to first seek mediation to resolve problems that come up after their divorce is final.

WHEN NOT TO USE MEDIATION

Mediation may not be a good choice if:

- ❖ a person or his/her children have been verbally, physically, emotionally or sexually abused by the other person
- ❖ one person fears the other person or doesn't trust the other party to be fair or honest
- ❖ one person is not ready emotionally to mediate
- ❖ the mediator is not treating either party fairly
- ❖ one person has difficulty making decisions
- ❖ there is a power imbalance the mediator cannot neutralize

WHO DOES IT AND HOW DO I FIND THEM?

Mediators are individuals who literally go between two parties to resolve a dispute. To become qualified in Minnesota, most family mediators take a 40 hour basic course in mediating family matters. They must take training that is approved by the Minnesota Supreme Court. However, the State of Minnesota does not license mediators.

An individual does not have to be an attorney to become qualified as a mediator. While many attorneys take the necessary training, some mediators have backgrounds in psychology, social work, accounting, and financial planning. Court rosters of qualified mediators often list the specialty an individual offers in addition to the mediation skills. Thus, if individuals are interested only in mediating a custody or visitation problem, they might select a mediator who is skilled as a psychologist or social worker. If parties have a problem resolving spousal maintenance or child support problem, they might select a mediator who has experience as an accountant or financial planner. Many attorneys who are qualified mediators practice in the area of family law and are familiar with the problems surrounding divorce. However, all mediators must be fair and impartial and must refrain from giving advice or taking sides. The mediator cannot be a person that practices their other profession for you or the other person while serving as your mediator.

The courts in Dakota County keep lists of mediators who meet state requirements. There is also a list of mediators posted at the Minnesota State Courts web site. The address is www.courts.state.mn.us. To get a print copy of the list of qualified family mediators, contact the Dakota County Courthouse. There may be a small charge for sending this to you.

Many organizations list mediators. Consult the Resource Appendix included with this document for lists of mediators in the Twin Cities area.

COST

Mediation costs are usually shared by the individuals involved in the dispute. Generally, mediator's costs are significantly less than attorney's costs if they take a case to court.

Some mediators are paid by the hour and some offer a sliding scale payment schedule. Usually each person pays half the cost, but other options are available. Basically, the individuals control how to divide the costs fairly.

WHERE

Usually, mediators will furnish an office for the actual consultation and mediation. Individual parties may also contact their local public libraries or the law library in Dakota County to request a small meeting room. These locations may be more conveniently located to the individuals participating in the mediation. Individuals may consult the Resource Appendix for addresses and phone numbers for the libraries in Dakota County which provide space.

WHEN WOULD I NEED AN ATTORNEY?

Some couples may proceed through their divorce actions completely on their own or with the assistance of a mediator. However, it is a very good idea to contact an attorney before or during mediation so you can learn your legal rights and duties. These may involve child custody, visitation, support or paternity issues. Other questions may involve rights surrounding spousal support, property division and pension and health insurance.

You may also want to contact an attorney and ask if they offer "unbundled" legal services. That is, they may be willing to assist in one aspect of your divorce action while you work on the aspects that you can complete on your own or with the assistance of a mediator. Sometimes couples concluding mediation ask the mediator to draft a memorandum of understanding. This is not the final divorce decree. However, it is a document you should ask an attorney to review for you. The attorney's fee for the specific "unbundled" task would be less than the fee for full attorney representation in all phases of the divorce.

It is always a good idea to have an attorney review any agreement before you sign off on it. The attorney would review the document to determine: 1) does the agreement work the best for you and your children? ; 2) does the agreement contain all elements required by Minnesota law? Once an agreement is signed, it is very costly and quite difficult to change.

Attorneys may be consulted if domestic abuse is involved. Domestic abuse advocates are available to advise individuals about whether they should use attorneys or not. If you decide to get legal advice, you should try to find a lawyer that understands family law and issues related to abuse.

RESOURCE APPENDIX

A. Rosters

1. Lists of Rule 114 mediators are available by calling the Dakota County District Court Administrator at 651-438-8110
2. A neutrals roster is also available at the Minnesota Supreme Court web site: www.courts.state.mn.us

B. Attorney Referral

Dakota County Bar Assn.
Suite 201
15025 Glazier Ave.
Apple Valley, MN 55124
952-431-3200

Minnesota State Bar Assn.
600 Nicollet Mall, #380
Minneapolis, MN 55402
612-333-1183

C. Dakota County Court Services

Dakota County Judicial Center
1560 West Hwy. 55
Hastings
651-438-8100

District Court
14955 Galaxie
Apple Valley
952-891-7256

District Court
1 Mendota Rd. W
West ST. Paul
651-564-6200

RESOURCES (CONT.)

D. Mediation Organizations

**Dispute Resolution Center
974 West Seventh St.
St. Paul, MN 55102
651-292-7791**

**Erickson Mediation Institute
3800 W. 80th St., Suite 850
Bloomington, MN 55431
952-835-3688**

**Mediation Center for Dispute Resolution
1563 Hewitt Avenue
St. Paul, MN 55104
651-523-2880**

E. Books (available in the Dakota County Law Library)

- 1. Family Mediation: A How-to Guide If You Don't Have a Lawyer, by D-M Boulay and Katherine J. Pohlman, Hamline University Law and Graduate Schools: Mediation Center for Dispute Resolution, 1999**
- 2. How to Mediate Your Dispute, by Peter Lovenheim, Berkeley: Nolo Press, 1996**
- 3. Using Divorce Mediation: Save Your Money & Your Sanity, by Katherine E. Store, Berkeley: Nolo Press, 1999**

Public Libraries

Forms are available at the Dakota County Law Library as well as Dakota County Public Libraries for parties representing themselves in family court.

DAKOTA COUNTY PUBLIC LIBRARY LOCATIONS:

**Burnhaven
1101 W. Co Rd 42
Burnsville
952-435-7177**

**Farmington
508 Third St.
Farmington
651-463-7990**

**Galaxie
14955 Galaxie Ave.
Apple Valley
952-891-7045**

**Heritage
20085 Heritage Dr.
Lakeville
952-469-6041**

**Inver Glen
8098 Blaine Ave.
Inver Grove Hts.
651-552-7527**

**Pleasant Hill
1490 S. Frontage Rd.
Hastings
651-437-5286**

**Wentworth
199 E. Wentworth
W. St. Paul
651-457-8497**

**Wescott
1340 Wescott Rd.
Eagan
651-688-1500**